

Exhibit 4

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL E. BOYD,) Case No.: 11-05018-PSG
Plaintiff,)
v.) **ORDER GRANTING DEFENDANTS'**
GMAC MORTGAGE LLC; MORTGAGE) **MOTION TO DISMISS PLAINTIFF'S**
ELECTRONIC REGISTRATION SYSTEMS,) **FIRST AMENDED COMPLAINT**
INC.; and DOES 1 TO 100,)
Defendants.)
(Re: Docket Nos. 58, 60)

Plaintiff Michael E. Boyd ("Boyd"), appearing *pro se*, asserts causes of action against Defendants GMAC Mortgage, LLC ("GMAC"), Mortgage Electronic Registration Systems, Inc. ("MERS"), and Does 1-100 (collectively "Defendants"). Defendants move to dismiss Boyd's First Amended Complaint ("FAC") for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Having considered the arguments and evidence presented, the court GRANTS the Defendants' motion to dismiss Boyd's FAC. Because it is clear that amendment cannot save Boyd's claims, the dismissal is with prejudice. Boyd's motion for procedural relief also is DENIED as moot.

1 **I. BACKGROUND**

2 On October 11, 2011, Boyd filed the instant complaint against Defendants. On November
3 9, 2011, Defendants moved to dismiss the complaint, and on December 5, 2011, this court granted
4 Defendants' motion with leave to amend. On May 22, 2012, Boyd filed his FAC, and on June 25,
5 2012, Defendants moved to dismiss Boyd's FAC. Boyd failed to timely respond, and on July 12,
6 2012, Boyd filed a motion for procedural relief from the July 9, 2012 filing deadline for an
7 opposition to Defendants' motion to dismiss.

8 As was the case with Boyd's original complaint, the court extracts these allegations with
9 some difficulty because Boyd's complaint does not set forth particular allegations as individual
10 causes of action. The court reads Boyd's FAC as essentially alleging the same set of facts as in his
11 original complaint, but including the new allegation that Defendants' actions were in breach of
12 Boyd and his wife's Joint Living Trust.¹ Because the court's previous order granting Defendants'
13 motion to dismiss Boyd's original complaint included an exhaustive background and discussion of
14 Boyd's original claims for alleged incomplete reconveyance, unconscionability, and Defendants'
15 authority to foreclose,² the court will not address these claims again, and adopts the reasoning of its
16 previous order.³ At issue here is whether the additional Joint Living Trust claim in Boyd's FAC
17 can save Boyd's complaint from dismissal. As is discussed in greater detail below, it does not.

18 **II. LEGAL STANDARDS**

19 A complaint must contain "a short and plain statement of the claim showing that the pleader
20 is entitled to relief."⁴ If a plaintiff fails to proffer "enough facts to state a claim to relief that is
21 plausible on its face," the complaint may be dismissed for failure to state a claim upon which relief
22 may be granted.⁵ A claim is facially plausible "when the pleaded factual content allows the court to

23 ¹ See generally Docket No. 52 (Pl.'s FAC).

24 ² See generally Docket No. 32 (Order Granting Defs.' Mot. to Dismiss).

25 ³ Boyd's FAC omits much of this language, and is replaced by allegations that Defendants
26 breached Boyd's Joint Living Trust.

27 ⁴ Fed. R. Civ. P. 8(a)(2).

28 ⁵ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

1 draw the reasonable inference that the defendant is liable for the misconduct alleged.”⁶
2 Accordingly, under Fed. R. Civ. P. 12(b)(6), which tests the legal sufficiency of the claims alleged
3 in the complaint, “[d]ismissal can based on the lack of a cognizable legal theory or the absence of
4 sufficient facts alleged under a cognizable legal theory.”⁷

5 On a motion to dismiss, the court must accept all material allegations in the complaint as
6 true and construe them in the light most favorable to the non-moving party.⁸ The court’s review is
7 limited to the face of the complaint, materials incorporated into the complaint by reference, and
8 matters of which the court may take judicial notice.⁹ However, the Court need not accept as true
9 allegations that are conclusory, unwarranted deductions of fact, or unreasonable inferences.¹⁰
10 “Dismissal with prejudice and without leave to amend is not appropriate unless it is clear that the
11 complaint could not be saved by amendment.”¹¹

12 III. DISCUSSION

13 Boyd alleges that GMAC and MERS violated the UCL because Boyd’s property was part
14 of a Joint Living Trust, and due to this alleged fact Boyd makes the conclusory allegation that he
15 did not have the authority to execute loan agreements and that the agreements therefore are void.¹²
16 Boyd’s FAC alleges that Defendants, specifically GMAC and MERS, “breach[ed] said ‘Joint
17 Living Trust’ through the use of standard form loans and promissory notes . . . signed by Plaintiff
18 in and about January 2007.” This allegation is made throughout Boyd’s FAC,¹³ but this is clearly

19 ⁶ *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009).

20 ⁷ *Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1990).

21 ⁸ See *Metzler Inv. GMBH v. Corinthian Colls, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008).

22 ⁹ See *id.* at 1061.

23 ¹⁰ See *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); see also *Twombly*,
24 550 U.S. at 561 (“a wholly conclusory statement of [a] claim” will not survive a motion to
dismiss).

25 ¹¹ *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F. 3d 1048, 1052 (9th Cir. 2003).

26 ¹² See generally Docket No. 52 (Pl.’s FAC).

27 ¹³ Compare Docket No. 52 (Pl.’s FAC) with Docket No. 1 (Pl.’s Compl.). Boyd’s FAC for the first
28 time also includes a chart and summary titled “12 Steps of Bank Fraud.” See *id.* at 3-7.

1 not the law.¹⁴ GMAC and MERS were not parties to the trust. If that were not enough, Boyd
2 acknowledges that he was the Joint Living Trust's trustee at the time he executed the loan
3 agreements.¹⁵ The net result is that Boyd's FAC fails to state a claim for relief and cannot survive
4 Rule 12(b)(6).

5 **IV. CONCLUSION**

6 The court GRANTS Defendants' motion to dismiss Boyd's FAC. Because it is clear that
7 amendment cannot not save Boyd's FAC, the court's grant of dismissal is with prejudice. Because
8 Boyd's motion for procedural relief is now moot, this motion too is DENIED.

9 **IT IS SO ORDERED.**

10 Dated: August 22, 2012

11 
PAUL S. GREWAL
United States Magistrate Judge

14 See, e.g., *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) ("It goes without saying that
a contract cannot bind a nonparty.").

15 See Docket No. 52 (Pl.'s FAC) at 10.